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QMDC comments on the Regional Planning Interests Bill 2013

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Submission to:

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State Development, Infrastructure and Industry Committee
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These comments are presented by the Chief Executive Officer, Geoff Penton, on behalf of the Queensland Murray-Darling Committee Inc. (QMDC). QMDC is a regional natural resource management (NRM) group that supports communities in the Queensland Murray-Darling Basin (QMDB) to sustainably manage their natural resources.

1.0 General comments

1.1 Purposes/objects of the Bill

QMDC supports the need to improve regional planning instruments. Unfortunately the purposes/objects of the *Regional Planning Interests Bill 2013* (the Bill) are ambiguous, and confusing, and in QMDC's opinion, conflict with other key environmental protection policies and laws.

The Bill's stated intention to manage the impact of resource activities and other regulated activities on areas of the State that contribute, or are likely to contribute, to Queensland's economic, social and environmental prosperity' is not reflected in the actual provisions of the Bill.

QMDC believe such planning instruments should also be designed and implemented to recognise that 'prosperity' is reliant on the ecosystem services, natural resources provide. This legislation must therefore prevent unacceptable impacts on the region's natural resource assets and the social fabric of regional communities.



The environmental and social performance of the mining and resources sector has come under increased scrutiny from community organisations. There is also a growing worldwide push for the corporate sector to embrace the principles of 'corporate social responsibility' and 'sustainable development'. <http://www.iisd.org/business/issues/sr.aspx>

In QMDC's opinion, overhauling the Queensland Government's planning regime for regions requires the Bill to:

- examine closely the mining and resource industry's compliance records;
- analyse social and environmental damage costs;
- identify and assess any gaps in the identification and management of risk arising from mining and resources exploration, assessment, production and rehabilitation, particularly as they relate to human health, the environment, soil and land condition; and water catchments;
- identify best practice in relation to the management of mining developments in close proximity to agricultural enterprises, residential properties and rural townships, and consider appropriate ways to address such interfaces;
- examine how the characteristics of the mining and resources industry in Queensland compare to the industry nationally and internationally;
- examine real costs of regulation to the industry;
- examine profits gained through the exploitation of the State's natural resource assets; and
- make it mandatory for the industry to report on sustainability indicators.

Many environmental, economic and health challenges created by mining developments could effectively be managed through improved planning. QMDC believes improving Queensland's current planning regime requires a commitment to significant ongoing research into the long-term and cumulative environmental and social impacts and how they are best regulated. This type of research is not apparent in the recommended changes proposed by the Bill.

QMDC believe the Queensland Government should be increasingly concerned with sustainable development, increasing transparency, and building social licence and trust within regional communities. Although an increasing number of companies and organisations want to make their operations sustainable, the Queensland Government, in QMDC's opinion is yet to respond effectively to the external impacts of coal and coal seam gas mining operations.

Integral to affording protection is the identification of such areas of interest whether they be parcels of land, soil types, surface and underground water resources, vegetation types, airways or ecosystem services in their entirety. QMDC has offered its expertise to the State government to assist in the identification of key areas of interest to the region's stakeholders e.g. Traditional Owner groups and Aboriginal communities, landholders, farmers, conservationists, business owners, tourism operators etc. The data contained within these maps will better inform the Bill to identify the desired future spatial structure of the region in terms of future land use, regional infrastructure, and key regional resources to be preserved, maintained or developed.

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1.2 No go zones should be designated where mining & other development should not be allowed

QMDC overall supports the requirement for mining companies to apply for permits to operate in protected areas but believes there should still be some clearly identified areas where mining should not be able to be contemplated or carried out. Co-existence (yet to be legislatively defined) is in our opinion not possible in some significant agricultural and environmental areas of the Darling Downs region.

There is an ever-increasing community expectation amongst QMDC member organisations and the landholders we work with that legislation, policy and planning instruments have an environmental and social bottom line that provide higher levels of protection based on a set of well-considered environmental management standards.

QMDC asserts that the Bill needs to demonstrate a comprehensive and accurate knowledge of the workings and capacity of the mining and resources industry. Stringent planning mechanisms are needed because, for example, at the very least “beneficial use” of coal seam gas water is not a tried practice in the currently proposed types of use, e.g. construction; research and development; domestic and drinking water; coal washing; dust suppression. It is a very new activity and in our opinion requires addressing in this Bill. Fundamental to regional interests are soil and water quality.

Communities seek dependability and certainty, namely the ability to specify expected behavior, for example, from the users of coal seam gas water, mining and resource companies and the State government.

In our opinion the Bill creates potential problems because of the following: - a large number of exemption clauses, lack of consideration for the environment, increased power to Chief Executive, and removing third party appeal rights. The Bill also does not consider the impacts of resource activities on regional interest areas, where those resource activities do not occur in a regional interest area.

1.3 Exemption clauses do not serve to protect regional interest

The exemptions (Division 2 clauses 22-25) for not requiring a RIA are far too broad and lenient towards the resource industry's interests.

Clause 22 - This does not appreciate the potential for unconscionable bargains or agreements that could follow on from the inequitable negotiation powers between a mining company and a landholder.

Clause 23 – What does “restoration” of an impact mean as per clause 23(b)? Depending on the nature of the impact less than a 12 month period could devastate a regional interest area for over 100 years e.g. contamination of an aquifer caused by exploration bores, soil contamination caused by toxic waste materials etc.

Clause 24 - QMDC is concerned that potentially the coal seam gas mining industry will be almost entirely exempt because most of Queensland is already covered in ATP permits.

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Clause 25 - QMDC does not agree that coal mining, MDL (Mineral Development Lease) areas should be exempt (along with Mining Leases).

QMDC asserts there a large number of important outstanding issues pertaining to existing mining operations still to be addressed. Removal of regulatory requirements for current small and large scale mining operations must take into account the priority to prevent and manage current social and environmental impacts before adding new impacts, hazards and /or harm even when deemed low risk.

1.4 Too much power given to the Chief Executive

Divisions 5 and 7 The Bill gives broad powers to the Chief Executive and assessing agencies to refuse or condition resource activities and other regulated activities in areas of regional interest. Important details of the new legislation are yet to be prescribed, including what types of activities will be prescribed as regulated activities and the full decision-making criteria for assessment applications. The integrity of the Bill cannot be concluded until these supporting regulations are released for public scrutiny and comment.

QMDC does not support the Chief Executive being deemed the appellant to a matter raised as per Division 3 clause 71 because once the government becomes the respondent that limits the objective role the department should be playing. The proposed approach limits the free exchange of information between parties to the appeal.

1.5 Limited protection for the environment

QMDC is concerned that the Bill's introduction of a new type of 'authority' to carry out mining activities in newly declared "areas of Regional Interest" which has the potential to offer environmental protection is effectively undermined by other key clauses of the Bill. These Division 2 clauses offer a mechanism whereby mining proponents can apply to undertake mining activities in the prescribed regional interest areas which could include strategic environmental areas identified in the Regional NRM Plan as needing protection from mining developments. The Bill provides numerous exemptions for proponents and merely offers environmental protection for specific areas as prescribed by regulations.

Agriculture is the only "consideration" for protection, there is no reference to the environment (apart from water resources needed for agriculture). Social impacts are only addressed by buffer zones around some towns in the regional plan (many have been omitted).

The Bill and co-existence criteria for Strategic Environmental Area (SEAs) do not provide adequate protection. The department can approve any resource activities it wants to, provided it meets the criteria (the details of which are not publicly available). There is no prohibition on any types of resource activities occurring in any of the four types of regional interest areas.

Listed below are some of the strategic environment areas of the Darling Downs region:

- National Parks in the region
- Main rivers in the Basin – Condamine, Murray, Darling
- Lake Broadwater

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- Darling Downs remnant grasslands
- Brigalow Belt – endangered vegetation community
- Escarpment parks
- Strategic Cropping Land
- Fishing and camping sites – including camping and water reserves for current and future tourism infrastructure
- Cultural heritage sites
- Strategic offset investment corridors
- EPBC Communities
- Floodplains
- Groundwater dependent ecosystems
- Tourist drives
- Bunya Mountains

Protecting the inherent value of the above listed areas will help the Queensland Government fulfil its policy to “grow a 4 pillar economy” by strengthening tourism, agriculture alongside the resources and construction industries.

QMDC continues to argue that the Queensland Government needs to clearly articulate what it believes constitutes “a relatively low risk to the state” and disclose how that risk has been assessed against regional NRM, landscape and catchment planning targets, values and aspirations. This assessment should be publically available to facilitate community confidence in the Bill and its capacity to protect the state’s natural resource assets and significant environment areas. Small scale mining sites are those predominantly found on the abandoned mine site register. Therefore although they may be deemed less risk from a management point of view, history suggests otherwise.

The risk assessment process because it is most often confined to agency and industry scientists, and consultants, traditionally does not include public or community perceptions, priorities, or needs. QMDC recommends widespread public participation to better design risk assessment to inform this Bill.

1.6 Third party appeals constitute an important community right

QMDC does not support restricting merits appeals on third party appeals for RIA decisions to affected land owners and applicants:

Limiting the appeal process to the applicant, namely the owners of the land or the ‘affected land owner’, is reducing the rights of landholders and community in a collective capacity. The very term regional interests area denotes a much broader and wider public interest is being considered and not a specific focus on the individual. A narrow definition is not acceptable.

Additionally, the making of a submission in the assessment stage should give rise to a right of appeal against a decision about the application; this right should not be taken away by the Bill.



1.7 Decision making criteria

QMDC is concerned that the Bill has not outlined important decision making criteria but has rather placed that criteria within regulations (which are yet to be publically reviewed) and which will not require public consultation. For example, the criteria for making a Regional Interest Authority (“RIA”) decision is missing from the Bill, as are public notification requirements. The government’s move these criteria to sit within regulations means they can be changed easily and without public scrutiny. Community sentiment is that this does not fit within the principles of a “transparent and open” government.

1.8 Bill undermines the Environmental Protection Act 1994

The Bill undermines the *Environmental Protection Act 1994* because where submitters have already engaged in the EIS/EA or mining lease objection process, the RIA will now take precedence and the EA can be amended. QMDC does not accept that Bill has environmental protection and public interest at its core as it is currently drafted. The Environmental Impact Assessment (EIA) process requires science to inform development approvals and any associated conditions for an approved development, and allows for wider public scrutiny and input. QMDC does not support the Bill taking precedence over the EIA process.

Additionally, the proposed changes to the EPA, reinforces the need to have third party public interest appeal rights built into the Bill.

1.9 Application and notification clauses

Application and notification requirements are vague. There must be in QMDC’s opinion, notification to the public in all circumstances to allow the public to make submissions prior to a RIA decision.

This should be supported by stronger provisions for public access to information demonstrating a commitment by the Queensland Government to be an open government.

1.10 Governance

QMDC does not support the Bill’s shift of governance to the Department of State Planning and Infrastructure. A separation of powers is needed to assess the impacts of proposed planning developments and to decide regional interests. The assessment process should therefore remain with the Department of Environment and Heritage Protection owing to the current expertise of departmental staff with mining operations and environmental issues.



2.0 Specific comments

Page and line #	Section #	Comment
8... 10-17	Division 2	There is a conflict of purpose between state and regional interests between (a) and (b)
10...12-20	Section 8	Landholders need to have the right to demonstrate an area should be part of a PAA provided in meets established criteria
10...21-24	Section 8	Need to assiduously apply the precautionary principle in areas of medium to high risk POTENTIAL on water sources
11...18-30	Section 10	Strategic GRAZING land should be protected as well. This will require additional guidelines.
12...21-24	Section 11	Need to assiduously apply the precautionary principle in areas of medium to high risk SALINITY RISK
18...16-30	Division 2	It should be at the discretion of the landholder alone to determine if an area of PAA should be exempt. There is a clear conflict of interest here and determination should be consistent with processes outlined when the landholder is not in agreement.
19...4- 11	Division 2	It is not clear how the 'severity of the impact' will be determined. It should follow impact assessable processes in PAA.
19...12-23	Section 23	This section is not supported as impact processes are not identified, short term may result in permanent negative impact and monitoring processes are not articulated.
21...16-20	Section 25	Small scale operations can still have long term or permanent impact.
21...21-31	Section 26	Written notice notification to landholders should be clearly delineated.
23...18- 25	Section 30	More detail on reporting requirements needs to be referenced, even if it in another subordinate document.
24...10-12	Section 32	'Minor amendment' is not clearly defined. A minor amendment may be the precursor to substantive change. There is no wider consultation nominated making this subject to manipulation.
26...18- 32	Section 36	Information needs to be publicly available before a decision is made.
30...30-32	Section 43	Information needs to be publicly available before a decision is made.
33...16-19	Section 48	Supportive of this declaration
33...21-25	Section 49 (a)	Both on-site and landscape impacts should be considered.

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37...1-25	Part 4, Division 1	Not supportive of a further dilution of the SCL...this is inconsistent with the purposes of the Bill. The mitigation measures in line 20 are tantamount to 'make good' provisions where the damage may be irreparable and never able to be 'made good'.
38...8-24	Section 62	It is not clear how this mitigation will work. What is the standard of reporting, who takes responsibility for reporting and what is the role in reviewing any reporting in terms of catchment and local government impact as specified in (2), lines 22 and 23.
39...5-11	Section 64	This looks like cross subsidization into Treasury budgets for the departments.
41...18-29	Section 71	The government should not be a respondent to actions taken through the court process. The government should serve the role of the supplier of objective information...being a respondent limits this capability. Also, as a respondent, this arrangement will restrict free and open justice where a potential appellant will be unlikely to contest matters due to the imbalance of technical support of the department and the mining companies against them. This is an unfair legal contest.

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